IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 33502 of 2007(L)

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PETITIONER:

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R.K.MOHAMMED, S/O.ABDU, RARAMKANDATH HOUSE, NADAKKAVU, KALADY POST, PONNANI, MALAPPURAM DISTRICT.

BY ADV. SRI.E.R.VENKITESWARAN
SRI.R.SREEHARI

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, MALAPPURAM.

2. THE DY.TAHSILDAR,
TALUK OFFICE HEAD QUARTERS, PONNANI.

3. THE SECRETARY, TAVANNUR GRAMA PANCHAYATH, AYANKALAM POST PIN:679 549

4. THE GEOLOGIST,
OFFICE OF THE MINING AND GEOLOGY DEPT
DISTRICT OFFICE, MALAPPURAM.

5. STATION HOUSE OFFICER,
CHANGARAMKULAM POLICE STATION.

BY ADV. SRI. I.V. PRAMOD, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC , J

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W.P.(C). NO. 33502 OF 2007

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Dated this the 14th day of November, 2007.

**JUDGMENT**

Proceedings were initiated against the petitioner on the allegation of having unauthorisedly transported river sand in vehicle No. KL 07 G 3173. On an earlier occasion, the petitioner approached this Court by filing W.P.(C) No. 31604/2007. That case was disposed of by Ext.P6 judgment directing the 1st respondent to complete the proceedings under Rule 27 of the Kerala Protection of of River Sands and Regulation of Removal of Sand Rules, 2002. In compliance therewith, after completing the proceedings, the 1st respondent has issued Ext.P7 order directing release of the vehicle on condition that the petitioner remits Rs.40,000/- and Rs.25,000/- towards value and fine. Challenging Ext.P7, this writ petition has been filed.

2. The petitioner relies on Ext.P3 pass and Ext.P4 receipt. According to the learned counsel, the permissible time for transportation expired only at 2.30 p.m. on 18.10.2007 and despite this, the vehicle was seized at 2 p.m. It is also submitted

that Ext.P4 evidenced that one of the tyres of the lorry was punctured and as the same had to be repaired there occurred some delay in transportation. It is submitted that it was in view of this that the vehicle happened to be loaded with river sand at the time when it was intercepted at 2 p.m. The petitioner submits that there is absolutely no material to find him guilty and to order deposit of value and fine as has been done in Ext.P7.

3. I have gone through the pleadings and also considered the submissions made. On a reading of Ext.P7, it is clear that at the time when the vehicle was seized on 18.10.2007, there was nothing that could be produced before the authorities to prove that the delay occurred was only on account of the repair that was necessitated as is now sought to be made out. It is also seen that the place to which the sand was to be transported was accessible in 45 minutes. But, then the truck was seized with the river sand at 2 p.m. though the truck had left at 8.10 a.m. It is on these factual basis that the 1st respondent has concluded that under the cover of the one pass issued, the petitioner was unauthorisedly transporting much more river sand. I am in

agreement with the 1st respondent in his conclusions. If as a matter of fact the vehicle needed repair as now contended, the petitioner should have produced the documents in support of this at the time when the vehicle was seized. This has not been done. If so, I am not prepared to rely entirely on Ext.P4 and to upset the findings in Ext.P7. Insofar as the time mentioned in Ext.P3 is concerned, in view of the fact that the destination where the sand was to be delivered was accessible in 45 minutes, for the only reason that the vehicle was seized at 2 p.m. before the time expired at 2.30 p.m., the seizure of the lorry is not invalid. For these reasons, I am not in a position to accept the contention of the learned counsel for the petitioner.

This writ petition fails and the same is dismissed.

**ANTONY DOMINIC, JUDGE.**

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